

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Michelle Simha, as Trustee
for the Next-of-Kin of Noah Leopold,

Plaintiff,

vs.

Mayo Clinic,

Defendant.

Civil File No.
24-CV-01097-DTS

**Declaration of Norman Leopold in Support of
Motion to Amend to Add a Claim for Punitive Damages**

Norman Leopold declares and states as follows:

1. I am one of the heirs and next-of-kin of Noah Leopold. This Declaration is submitted in support of Trustee's Motion to Amend to Add a Claim for Punitive Damages.

2. On June 2, 2014, Noah and I arrived at Mayo. Noah began tests on June 3rd. I believe it was on that afternoon or the following day that we met with Dr. Karon. He was the first doctor we met with at Mayo. He asked us why we were coming to Mayo. Noah advised that he wanted to be checked out to see what can be done to help his heart and liver condition. We explained everything to Dr. Karon about Noah's medical history. Noah and I enjoyed speaking with him, but he wanted us to see Dr. Boilson. We saw Dr. Boilson either that afternoon or on June 4th. Dr. Boilson said he

wanted to run tests and made an appointment for us to come back on Friday, June 6th. Thursday afternoon Noah and I were walking around downtown Mayo, enjoying the good weather and the street festival. It was after 5:00 p.m. when we got a call from Dr. Boilson wanting to see us right away. We went up to his offices and that's when he told us that Noah was very sick. He advised us that Noah needed a heart transplant and started to go into detail with some of the test results. I told Dr. Boilson that I would like to get Noah's cardiologist in Miami, and Karen, on the phone with us, and Dr. Boilson agreed. We had a very long call. When we got off, Noah was very upset and asked if he could speak again to Dr. Karon. Dr. Boilson scheduled an appointment for the next morning and we kept the appointment we had with him for Friday afternoon. When Noah and I met with Dr. Karon on Friday, Noah was in denial. Dr. Karon was very blunt about Noah's prognosis and advised Noah that he needed the transplant as soon as possible. When Noah asked questions, Dr. Karon was direct with Noah and told him that if he didn't get the transplant now his other organs would start to shut down and he would not survive for more than 5 years. He also indicated it would be a painful death. Later that day, we saw Dr. Boilson again who urged Noah to be admitted to St. Mary's that weekend. Noah told Dr. Boilson that he needed to go home and think about everything, speak to his doctors and do research, but he did agree to return for the work-up for the transplant.

3. Noah and I met with heart transplant surgeon Dr. Richard Daly on June 29, 2023. Dr. Daly discussed the surgery. He told us he was expecting the transplant would involve both liver and heart. He said his role would involve only the heart and

that the liver transplant team would do the liver. He expected the operation to be about 17 hours.

4. On August 16, I went with Noah to St. Mary's, where he was scheduled for a procedure involving insertion of a balloon pump. Afterwards, he was admitted to the hospital. We spoke to Dr. Ternus that afternoon; our discussion with him was recorded and so the content of that is known. Karen and I stayed at the hospital that evening until about 10 p.m. Shortly after getting back to our Airbnb, Noah called to advise us that he was being taken to the OR because the balloon pump had burst and that he was bleeding. Karen and I went back to the hospital fully expecting that he was already in the OR only to find him still in bed, with a lot of doctors/nurses surrounding him. The doctor advised that they stopped the bleeding and that they were going to wait until morning to take him to the OR. We stayed with him for a while and then returned to the Airbnb around midnight.

5. We then got a second call from Noah. He was on the phone with the transplant department and conferenced me in. The transplant person advised Noah that a heart had suddenly become available and that they were scheduling him for the transplant the following day. Noah, Karen and I were in shock as to how quickly a heart became available. Noah had a lot of anxiety, so Karen drove me back to the hospital and I slept at the hospital that night.

6. Noah and I met with Dr. Spencer on the morning of August 17th. Karen came in the room while we were starting to talk. Dr. Spencer told us that he was the surgeon who would be doing the transplant later that evening or early the next

morning. Noah and I asked him specific questions as to what the procedure would involve. During this meeting, Dr. Spencer told us that a suitable heart had been located. Despite many questions by Noah (and me) regarding the donor, Dr. Spencer assured us that the heart was in good condition and should be accepted by Noah for transplant. Noah asked about the donor's medical history, drug use, age, and location. Dr. Spencer said he was not allowed to disclose any such information. Procedurally, he advised us of how the transplant would work. He said that Noah would be taken to the OR later that evening or very early the morning of August 18th. At that time, he would be prepped for the surgery. The sternum would be opened. He was very specific as he told Noah and me that his heart would not be explanted until the donor's heart was examined in the OR and confirmed to be suitable for transplant. He assured us that he would not remove Noah's heart until after the new heart was in the OR and examined. Sometime that afternoon, I went back to our Airbnb and got a call from Karen advising that the transplant for that evening was being canceled due to his rising creatine level.

7. On August 29th, Noah called me around 7:15 a.m. He told me he was on the phone with the transplant coordinator and hooked me into the call. He had received another offer. I was already dressed and walked over to the hospital. Noah was reaching out to Jenna and Michelle so they could make flight arrangements. Later in the morning Noah, Karen and I met with Dr. Rosenbaum. Noah joined Jenna and Michelle by phone. Dr. Rosenbaum told Noah that the heart that had become available was a "perfect heart" that he would feel comfortable transplanting to his own family.

This assurance was very important to Noah, and helped him get past his hesitations about the heart.

8. Sometime after meeting with Dr. Rosenbaum, Dr. Villavicencio (Dr. V) came to Noah's room to meet with him. Noah had a lot of questions and, although Dr. V started to answer them, I got the impression that he didn't want to be bothered. I wanted him to confirm the procedure as we understood it from Dr. Spencer. He didn't specifically answer but gave us a look like "of course that is how it is done". He did not meet with us for very long and seemed in a hurry to leave. After he left, I asked Noah what his impression was and he said: "He's a wise guy but I don't care as long as he is a good surgeon".

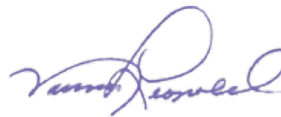
9. Karen and I spent the night in a family waiting room at the hospital. All the text messages from Mayo during the night had been positive. In the morning of August 30, we were escorted to Dr. V's consult room by nurse Samantha Johnson. Michelle listened into the call. Jenna was in the airplane. Dr. V advised us that there was a problem with the new heart and he described how difficult the surgery was and that the heart was bruised when it came out of the box. After telling us the heart was bruised, Dr. V explained that Noah's heart had already been removed so he had to try to make it work. At that time, we were completely in shock. We were waiting to hear the magic words that Noah was fine and was in recovery. Instead, Dr. V picked up a piece of paper and started drawing pictures for us to show how he was able to connect Noah to an ECMO machine, first using one technique, then another when the first one did not work. We were very confused. Karen asked him where we were going with all

of his explanations and that's when he told us that Noah's heart was taken out and that they couldn't get the new heart to work. He informed us that Noah was without a heart and was being kept alive on machines.

10. Although we may have spoken with Dr. V a few times, I specifically recall the evening of September 6th. Noah was scheduled to have the second transplant surgery the morning of September 7th. Michelle and I went to visit with Noah around 6 p.m. There were a lot of doctors in the room and we assumed it was in preparation for the second transplant. Instead, Dr. V advised that Noah was having a problem because he was bleeding from the bowels and they needed to take him to the OR right away. We were all concerned about getting the second heart into him as quickly as possible. I was asking Dr. V if this was going to cause a delay with respect to the transplant to which he advised me that if we couldn't stop the bleed then it was "game over". I was hysterical.

I declare under penalty of perjury that everything I have stated in this document is true and correct.

Dated: 9-30-24



Norman Leopold